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Committee on the Rights of the Child
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Consideration of reports of States parties

List of issues in relation to the report submitted by Bhutan under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Addendum

Replies of Bhutan to the list of issues*

[Date received: 24 April 2017]

* The present document is being issued without formal editing.

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Please recycle

List of Acronyms

CAA	The Child Adoption Act of Bhutan 2012
CBSS	Community-Based Support System
CCPA	The Child Care and Protection Act of Bhutan 2011
CMS	Case Management System
CRC	The Convention on the Rights of the Child
LEA	The Labour and Employment Act 2007
INTERPOL	International Criminal Police Organizations
NCWC	National Commission for Women and Children
OAG	Office of the Attorney General
OSCC	One Stop Crisis Centre
PCB	The Penal Code of Bhutan 2004 and (amendment) 2011
POSYPP	Police and Out-of-School Youth Partnership Program
PYPP	Police-Youth Partnership Program
RCJ	Royal Court of Justice
RBP	Royal Bhutan Police
RGoB	Royal Government of Bhutan
RENEW	Respect, Educate, Nurture and Empower Women
SOP	Standard Operating Procedures
WCPD	Women and Child Protection Desk
WCPU	Women and Child Protection Unit
YDF	Bhutan Youth Development Fund
YDRC	Youth Development and Rehabilitation Centre
Y-VIA	Young Volunteers in Action

1. Please provide statistical data, disaggregated by sex, age, nationality, ethnicity, socioeconomic background, and urban or rural residence, for the past three years, on:

(a) The incidence of all forms of sale of children;

(b) The number of children engaged in prostitution and its link to sex tourism;

(c) The extent to which child pornography is produced, imported, distributed or consumed within the State party, including through live performances;

(d) The number of prosecutions and convictions disaggregated by offence.

1.1 There has been no reported case of sale of children, child prostitution and production, import, distribution of child pornography with the Royal Bhutan Police (RBP) and other relevant agencies for the past three years.

1.2 The National Commission for Women and Children (NCWC) with support from the Asian Development Bank is carrying out a situational analysis of the employees working in the entertainment sector in 2017. The study aims to generate information on the situation of workers of the Drayangs, a legal entertainment establishment where women and men sing and dance to entertain customers, in Paro, Thimphu and Phuntsholing dzongkhags (districts). It will also identify critical areas of concern and exploitation (if existing) in the Drayangs. The findings from the study will be used for addressing the concerns and an Action Plan will be prepared holding different government stakeholders accountable to address the issue.

2. With reference to paragraph 19 of the State party report, please inform the Committee whether the State party considers evaluating the efficiency of the mechanisms and procedures to collect data on offences under the Protocol.

2.1 The RBP keeps record of all the cases of crimes against children that are reported to the various Police Stations in its Crime and Criminal Information System. Currently, the Case Management System (CMS) of the Office of the Attorney General (OAG) captures the data on cases that are prosecuted by the Office. The CMS is web-based and in addition to being a database system which generates periodic statistical reports, it also offers a rudimentary decision making feature. Similarly, the Royal Court of Justice (RCJ) also recently upgraded its case information system, which was merely an offline information system recording the number of cases registered and disposed by the Courts in Bhutan, into a web based monitoring system. The CMS enables the Courts to track the status of the case as well as the stages of the proceedings. It not only provides data base on cases registered and tried by the Courts but also enables smooth information sharing and retrieval and timely information. Further, it enables the Court to retrieve information on the specific type of cases and offences.

2.2 The NCWC with support from the Save the Children International is also implementing a two year project to develop a comprehensive information management system on women and children. The system will be linked to priority sector information systems and will capture all the data related to children including the offences under the Protocol.

3. Please provide information on the measures taken to prevent and address trafficking of children, namely the procedures for the identification and referral of child victims and to proactively investigate potential cases of trafficking. Please provide detailed information on the reported cases of trafficking occurred in 2007 and 2010, including prosecution and conviction of perpetrator(s) and protection of the rights of the child victims.

3.1 To prevent and address the trafficking of children, the Royal Bhutan Police (RBP) has the following procedures in place:

- The RBP upon getting the information about a missing/trafficked child, alerts all the Police stations with the details of the child and also alerts the entry and exit check posts in the country. The information is also shared with their counterparts in India.
- If it is established that the child has crossed the border into other countries, the Ministry of Foreign Affairs is informed through proper channel about the case to take further action through diplomatic missions and embassies.
- If the suspect(s) is/are apprehended, then due course of action is taken as per the legal provision of the laws of Bhutan.
- The RBP also creates awareness and sensitization among the people living near the border about safety measures to be taken to prevent being trafficked or kidnapped across the border.

3.2 The draft Standard Operating Procedures (SOP) on the Multi-Sectoral Response to Address Trafficking in Persons in Bhutan developed by the Ministry of Home and Cultural Affairs and the NCWC with support from UNODC lays down detailed procedures for the identification and rescue of trafficked victims including children and investigation of crimes of trafficking. Section 3.2.2.I cover the identification of victims and 3.2.2.X covers the procedure for investigation including collection of evidence, arrest and interrogation of perpetrators. Referral of victims for appropriate support services is laid down under section 3.2.2.XVII.

3.3 Further, the draft SOP on case management also provides a mechanism to respond and prevent issues faced by children in difficult circumstances which include child victims of trafficking. The SOP sets down the roles and responsibilities of each stakeholder and the processes to be followed for cases of children in difficult circumstances.

3.4 The RBP recorded two case of child trafficking, one in 2007 and two in 2010, both involving girl child. In 2007, a case of trafficking involving a female child of 16 years was registered in the Thimphu Police Station. She was brought to Thimphu as domestic help where she was physically abused and not allowed to leave. The perpetrator was arrested and convicted for three years in 2007.

3.5 In 2010, a case of child trafficking was registered with the Thimphu Police Station. The victim, who was a female child of 14 years, was lured by the perpetrator and taken to the border town of Phuntsholing. The perpetrator along with the victim was intercepted on the way and he was convicted for six years for trafficking and rape of minor in 2010.

3.6 In the same year, another case of child trafficking was registered with the Women and Child Protection Unit, Thimphu involving a female child of 15 years age. The accused was convicted for 5 years and one month in 2010. The person was also additionally charged for reporting of false information.

4. With reference to paragraphs 20 and 21 of the State party report, please clarify how the newly adopted legislation, amendments, rules and regulations, specifically give effect to the Optional Protocol. Please inform the Committee of the laws in force prohibiting the production and dissemination of material advertising any of the offences under the Optional Protocol, and the applicable sanctions for such offences.

4.1 Ratification of international human rights treaties and other international instruments entails the need for the country to draft new laws that uphold these treaties and protocols. Provisions within relevant national laws are subsequently amended in accordance with the principles of international treaties and instruments. The Child Care and Protection Act (CCPA) 2011, Child Adoption Act (CAA) 2012 and their subsequent rules and regulations have been drafted in cognizance of the Convention on the Rights of the Child (CRC) and the Optional Protocols to the CRC.

4.2 The Bhutan Communication Information and Media Act of Bhutan 2006 prohibits the production and dissemination of material advertising any of the offences under the Optional Protocol. Section 160(4) makes it unlawful for ICT facility providers, ICT service providers and vendors to publish or send material of a pornographic or sexually exploitative nature to children. Further a person is charged with the offence of computer pornography

under the Act if the person makes available any obscene communications in any form and is liable for a maximum term of imprisonment of less than three years and a minimum term of one year.

4.3 Further, Section 381 of the Penal Code of Bhutan (PCB) 2004 criminalizes the act of selling, manufacturing, issuing, distributing, displaying or otherwise dealing in obscene material. The offence of such an act is a petty misdemeanour and liable for a maximum term of imprisonment of less than one year and a minimum term of one month. The offence of computer pornography is also covered under Section 476 of the PCB and such an offence carries a maximum term of imprisonment of less than three years and a minimum term of one year.

5. Please provide information on the entity mandated with the implementation of the Optional Protocol and the budget allocated to the various activities related to its implementation.

5.1 The NCWC which is the agency entrusted with the responsibility of coordinating the implementation of programs related to the promotion and protection of the rights of women and children was granted autonomous status in 2008 and for the first time a Cabinet Minister was appointed as Chairperson of the Commission of the NCWC. The NCWC functions under the guidance of the Commission that comprises of high level government officials and representatives from the media, civil society, academia and business sector. The current Commission is chaired by the first female Minister.

5.2 Social investments in the 10th FYP amounted to Nu.20.04 billion which was 13.7 percent of the 10th FYP budget and in the 11th FYP, resource allocation towards the social sectors Nu.19.8 billion, which is 9.25 percent of the 11th FYP budget. This allocation includes the health and education sectors in addition to the budget allocation to the NCWC which amounts to Nu. 0.135 Billion during the 10th FYP and Nu. 0.154 Billion in the 11th FYP.

6. Please inform the Committee how the concept of "children in difficult circumstances" encompasses the offences under the Optional Protocol and takes into consideration the rights of child victims.

6.1 Chapter 5 (59) of CCPA looks into "child in difficult circumstances", which includes children who fall victims to abuse or exploitation for immoral or illegal purposes. Therefore, the children who are victims of offence are ensured with the required protection and assistance. A child victim is treated as a child in difficult circumstances as per Section 200 of the Child Care and Protection Rules and Regulations 2015. Section 207-217 ensures that a child victim is treated with dignity and compassion throughout the entire legal proceedings and that the best interest of the child is upheld in all matters concerning the child.

7. In relation to the Child Protection System, the NGO RENEW, the Community-based Support System and the Youth Development Fund, please describe the methods used to identify children vulnerable to offences under the Optional Protocol and how social programmes and policies protect children. In this regard, please also provide information on the Ministry of Health's One Stop Crisis Centre and the Police's Youth programmes.

7.1 The NGO RENEW mostly receives cases related to sexual abuse, negligence, shelter and scholarship related cases where either of the parents are not in the position to support the child for his/her education. Majority of the cases are referred to RENEW by the CBSS volunteers and other stakeholders for the shelter and psychosocial services support. Where cases are directly reported to RENEW, it works closely with relevant agencies like RBP, NCWC, Hospitals, and Courts etc.

7.2 The CBSS volunteers follow the case management guidelines laid down in Guidelines for RENEW Volunteers to deal with different cases at the community level. The CBSS is based in all the 20 dzongkhags and consists of RENEW volunteers who are based in the communities. These volunteers create awareness in their respective communities on

different issues related to gender based violence, domestic violence and child protection. They are contacted by the members of their community whenever there are cases involving children in need of care and protection and the volunteers in turn refer them to RENEW for support services.

7.3 YDF uses its network of Young Volunteers in Action (Y-VAI) to identify vulnerable children. The Y-VIA network consists of over 3,000 members which spread over 10 districts of the country. These members identify the children in difficult circumstances in their community and the cases are then referred to the YDF who in turn plans their activities based on the needs of these children.

7.4 The One Stop Crisis Centre under the Jigme Dorji Wangchuk National Referral Hospital provides the following services to children in need:

1. Examination and medical treatment and support to victims of child abuse and neglect.

2. The Centre also acts as a nodal centre to refer or referral of children in need for specialized care like paediatric care, psychological assessment and with the NCWC and CSOs for social and financial support as well as with law enforcement agency for administration of justice.

3. The Centre also undertakes medical age estimation for children who do not know their date of birth or age due to loss of documentation or census issues.

7.5 The RBP has adopted the community oriented policing, taking its recourse to a modern concept wherein the youth and the police work hand in hand as equal partners to confront the social issue. This initiative is called as the Police Youth Partnership Program (PYPP) and launched in 2008 targeting the school children. Subsequently, the Police and Out of School Youth Partnership Program (POSYPP) was launched in 2011 for the out of school youth. Police and Youth Partnership Programs which includes PYPP with biannual program in winter and summer, and POSYPP is conducted during Spring and Autumn. These programs have kept youth meaningfully engaged and encouraged a sense of empowerment amongst the youth. The members of the PYPP/POSYPP have also been volunteering and assisting the police in managing crowds and carrying out the civic duties in every public function. The RBP has so far covered a total of 8377 school children with 4215 female and 4162 male since the initiation of the program.

8. Please indicate the legal provisions that establish jurisdiction and extraterritorial jurisdiction over the offences under the Optional Protocol. Please explain how the Extradition Act covers all offences under the Optional Protocol and whether extradition requires the existence of an extradition treaty. Please also inform the Committee if the State party has entered any extradition agreements and of any extradition granted.

8.1 The High Court has the jurisdiction for purposes of criminal proceedings for extradition offences and the extradition offences are those that are included in the schedule of the Extradition Act, or an offence specified in the extradition treaty or arrangement with the foreign state. The schedule consists of two alternatives, namely alternative 1 and alternative 2. Alternative 1 consists of list of specific offenses and alternative 2 creates a provision of recognition of offence through the number of years in the sentencing. The alternative 2 of the schedule states that "Any offence which, in accordance with law of the Kingdom of Bhutan, is punishable with imprisonment for life or a term exceeding twelve months shall be treated by the Court as an extradition offence under this Act". Therefore, any offence which is punishable with the imprisonment term exceeding twelve months is an extraditable offence.

8.2 Generally there is a need for a treaty for extradition, however when the Royal Government of Bhutan (RGoB) considers it expedient to surrender the suspected fugitive offender to that state not withstanding that there is no extradition treaty with that state, it can do so subject to modifications, exceptions, conditions and qualifications, as may be made by the RGoB.

8.3 The RGoB has an extradition agreement with the Government of India.

9. Please describe the legal basis, including international agreements, for cooperation with other States parties with regard to investigations and criminal proceedings related to offences under the Optional Protocol.

9.1 Bhutan is a member of the International Criminal Police Organizations (INTERPOL). The RBP supports and coordinates the efforts of INTERPOL in combating transnational and international crimes.

10. Please describe the law, policy and practice regarding the investigation of offences under the Optional Protocol of cases where the age of the victim is undetermined.

10.1 Section 16 (b) of the CCPA states that in the absence of the records or certificate mentioned under Section 16 or discrepancies regarding the age of the child, it may be based on information from the child or testimonies of other persons considering the physical appearance of the child or expert medical opinion and other relevant evidences. In circumstances where the child's age cannot be determined, census records, health card and other legal documents of birth including Bhutanese birth prophecy (kaytshi) or expert medical opinion are used.

11. Please provide detailed information on programmes that provide social reintegration, physical and psychological recovery and family reunification to child victims of sale, prostitution and pornography. Please inform the Committee of measures to help all child victims recover their identity, such as nationality, and provide information on any differences between the assistance provided to children who are nationals and non-nationals.

11.1 While there are no specific programmes for child victims of sale, prostitution and pornography, various NGOs provide services to all children who are in difficult circumstances and who come in conflict with the law.

11.2 RENEW provides services like counselling, shelter (both emergency and long term), basic medical and legal services to all children in difficult circumstances. They also run vocational skills development program for the women and children in their shelter home and provide educational scholarships for children to continue their education.

11.3 The YDF also provides services to enhance youth participation by providing youth with opportunities and platforms to build leadership skills and self-esteem through capacity building, trainings and participation in community development projects. They also have programs catering to the needs of the children and youth under difficult circumstances by providing referral services, creating awareness, and advocating on important issues concerning children and youth. YDF also established an endowment fund to support the reintegration of children who come in conflict with the law after their release from the rehabilitation center through the provision of the following types of support:

(a) Basic educational scholarships to those children in conflict with the law who want to continue their studies after their release in the local schools near their community and family.

(b) Funding for vocational training to those who haven't been to school and want to pursue a career using the identified vocational skill.

12. Please describe existing remedies and procedures that may be used by child victims of sale, prostitution and pornography to seek compensation for damages from those legally responsible.

12.1 As per Section 36 of the PCB an offender may be ordered by the Court to pay appropriate damages or reparation for any loss, injury, or deterioration caused to a victim.

12.2 Section 38 of the PCB provides for the general compensatory damages for the victims of the crime. Thus, the child victims of sale, prostitution and pornography have the provision to seek compensatory damages under this provision. Further, the section 39 of the Code states that " If the Court determines that compensatory damages are appropriate, then a defendant convicted of a crime shall pay appropriate compensatory damages at the rate of the daily minimum national wage rate at the time of the crime for (a) Maximum ten years to

the victim or surviving spouse or next of kin of the victim and the cost for forty-nine days for seven people towards the expenses incurred in the funeral rites of the deceased victim, when the crime has resulted in the death of the victim; (b) Maximum of ten years, if the crime causes permanent disability to the victim; (c) Maximum of seven years, if the crime causes partial disability to the victim; (d) Maximum of five years, if the crime endangers the victim's life or causes serious bodily injury to the victim; or (e) The wages lost to the victim, when the crime has resulted in temporary loss of wages.

12.3 Further Section 30 and 30.1 of the CCPC may also be used by child victims of sale, prostitution and pornography to seek compensation for damages from those legally responsible. These Sections give the discretionary power to the Supreme Court and High Courts to make rules regarding the amount of compensation or damages to be awarded.